EVIDENCE — DECLARATIONS CONCERNING MATTERS OF PUBLIC OR GENERAL INTEREST — PROCEEDINGS OF A MEDICAL COUNCIL. — A medical council, acting within its statutory powers, ordered the removal of the plaintiff's name from the registered list of dentists on a report charging him with "conduct disgraceful in a professional respect." In a subsequent civil suit the defendant sought to prove the plaintiff's "professional misconduct." *Held*, that the order of the council is admissible. *Hill* v. *Clifford*, [1907] 2 Ch. 236.

The court regarded the order of the medical council as analogous to the finding of a lunacy inquisition. In so far as the order or findings of these related commissions, made under state authority, determine the status of an individual, they may be considered as judgments *in rem*. 2 SMITH, LEAD. CAS., 11 ed., 752. And on this ground the court found the evidence admissible. But a judgment *in rem*, although conclusive evidence of the relations which it establishes, is not evidence of the facts which must necessarily be found before it can be rendered. *Ward* v. *The Fashion*, 6 McLean (U. S.) 195. For these determinations of the court are *in personam* and only admissible between parties and privies. TAYLOR, EV., 9 ed., § 1673. As a judgment *in rem*, therefore, the admission of the order is proper only to show that the plaintiff was no longer a registered dentist, a fact not material to the issue raised. But the finding of a lunacy inquisition is always admissible against strangers as presumptive, not conclusive evidence of the fact of insanity, on the principle that the proceedings are matters of public and general interest. *Hughes* v. *Jones*, 116 N. Y. 67; 1 GREENLEAF, EV., 15 ed., § 556. And similarly, the report and order of this expressly authorized and publicly administered council are obviously trustworthy, and seem admissible.

GARNISHMENT — PROPERTY SUBJECT TO GARNISHMENT — GARNISHMENT OF OBLIGATION WITHOUT JURISDICTION OVER OBLIGEE. — A life insurance policy issued by a foreign corporation transacting business in New York in favor of non-resident beneficiaries was assigned to a New York creditor as security for advances. The insurance being due, the creditor garnished the insurance company in New York. The beneficiaries were served by publication. *Held*, that the garnishment is valid. *Morgan* v. *Mutual Benefit Life Ins. Co.*, 189 N. Y. 447.

For a discussion of the case in the lower court, see 21 HARV. L. REV. 219.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — AGREEMENT EXEMPTING RAILROAD FROM STATUTORY LIABILITY FOR LOSS BY FIRE. — A South Carolina statute provided that a railroad should be liable for any damage to goods on its premises caused by fire, unless the goods were placed there without its consent. The plaintiff put cotton on the defendant railroad's platform under a contract which stipulated that the cotton was put there without the consent of the railroad and at the owner's risk. *Held*, that the plaintiff cannot recover for the destruction of the cotton by fire. *German-American Ins. Co.* v. *Southern Ry. Co.*, 58 S. E. 337 (S. C.).

It seems clear that the railroad consented to the placing of the cotton on its premises, but attempted to exempt itself by contract from its statutory liability. It is sometimes argued that the object of statutes like the one in question is to make railroads more careful in the construction and operation of their engines. See *Rodemacher* v. *Mil. & St. P. Ry. Co.*, 41 Ia. 297, 309. But the true reason for such statutes seems to be based on the equitable principle that, as between two innocent parties, the loss should fall on the one who, by the use of a dangerous agency, makes such loss possible. *McCandless* v. *Richmond, etc., R. R. Co.*, 38 S. C. 103; see *St. Louis, etc., Ry. Co.* v. *Mathews*, 165 U. S. 1. It is settled law that a contract exempting a railroad from its common law liability for loss by fire is not against public policy. *Hoadley* v. *Northern Transportation Co.*, 115 Mass. 304. Consequently, there would seem to be no reason in public policy why an innocent party may not exempt himself by contract from an exactly similar liability imposed by statute. In accordance with this view, under similar statutes in Iowa and Missouri, such contracts have been

held not to be against public policy. *Griswold* v. *Ill. Cent. Ry. Co.*, 90 Ia. 265; *American Cent. Ins. Co.* v. *Chicago & Alton Ry. Co.*, 74 Mo. App. 89.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACT BASED ON BREACH OF EXISTING CONTRACT. — The plaintiff was under contract for one year with F, a competitor of the defendant. The defendant made a secret agreement with the plaintiff to employ him for two years. This involved a breach of the contract with F, and was done to destroy F's business. *Held*, that the plaintiff cannot recover his salary, or for materials furnished. *Rhoades* v. *Malta Vita Pure Food Co.*, 112 N. W. 940 (Mich.).

It is often averred that contracts involving the commission of a civil injury to a third person are illegal. 15 AM. & ENG. ENCYC., 2 ed., 943; 9 CYC. 468. Under this broad language an agreement by A to buy goods of B would be unenforceable by B if the sale involved a breach of B's contract to deliver the same goods to C. Parties guilty of unlawful acts are not to be outlawed to that extent. *Cf. Nat'l, etc., Co.* v. *Cream City Co.*, 86 Wis. 352. Such cases fall rather within the class where the illegality is separate from the contract, which is therefore valid. *Armstrong* v. *Toler*, 11 Wheat. (U. S.) 258. Accordingly, the rule should be limited to cases where the injury involved forms the actual consideration for the promise to be enforced. In the present case the consideration — services rendered — was lawful, and the fact that the motive inducing the defendant's promise was the violation of the plaintiff's obligation to F should not make it illegal. However, though improperly included within the general rule, the decision may be supported on the ground that the plaintiff participated in an illegal conspiracy and that it is against public policy to enforce contracts between conspirators. *Cf. Veazey* v. *Allen*, 173 N. Y. 359.

INSOLVENCY — RIGHTS OF SECURED CREDITORS AGAINST INSOLVENT ESTATE. — Upon the death of his debtor a secured creditor filed his claim with the administrator for the full amount of his debt. The estate proved to be insolvent. The secured creditor foreclosed on his security before any debts of the decedent had been paid, and contended that he was entitled to a dividend on his claim as originally filed. *Held*, that the creditor can only receive a dividend on the amount due at the time of payment. *In the Matter of the Estate of Lavinia Kapu, Deceased*, Sup. Ct. of Hawaii, Sept. 10, 1907. See NOTES, p. 280.

INSURANCE — MUTUAL BENEFIT INSURANCE — INVALID CHANGE OF BENEFICIARY. — A member of a mutual benefit association surrendered the original beneficiary certificate and procured the issue of another, naming a new beneficiary who was by statute incapable of taking. After the member's death the beneficiary of the original certificate sued the association for the proceeds. *Held*, that the proceeds will be distributed as though no beneficiary had been named. *Grand Lodge, etc.* v. *Mackey*, 104 S. W. 907 (Tex., Civ. App.). See NOTES, p. 278.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACT. — The Act of Congress of June 11, 1906, c. 3073, 34 Stat. at L. 232, 233, provided that "every common carrier engaged in trade or commerce . . . between the several states . . . shall be liable to any of its employees or in case of death to his personal representative . . . for all damages which may result from the negligence of any of its officers, agents, or employees. . . ." *Held*, that the statute is unconstitutional. *Howard* v. *Illinois Central R. R.*, U. S. Sup. Ct., Jan. 6, 1908.

The five justices forming the majority agreed only on the ground that the terms of the statute were so broad as to include intra-state commerce, that as to this the statute was unconstitutional, and that this portion could not be separated from the rest. The dissenting justices were unanimous in rejecting this interpretation. Two members of the majority joined the four in the minority in declaring that Congress had the power to prescribe such a rule of liability, if